

Property Right of a Daughter; Can it Help a Woman to Reinstate her Identity

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Abstract—It has never been a good time to be a woman. Shackled at home, deprived of rights in society, and subjected to gender bias at the workplace, women have borne the brunt of being the weaker sex all through history. For years, women in India have been discriminated against and denied the right to ancestral property due to various reasons. A woman whether she is a daughter or a wife or a mother, deserves to get equal rights as her male counterpart. She should be treated with same respect and love as anyone else. Most of the women in India give up their careers and spend their life as homemakers. Thus, it is not only necessary but a responsibility to make sure that they do not suffer financially, physically or emotionally in case of any tragedy. It is essential to safeguard Property Rights of Women to secure their life. She deserves equal share as her brother in the property of her parents and as her husband in the property of her in-laws. While the world has achieved progress towards gender equality and women's empowerment under the Millennium Development Goals (including equal access to primary education between girls and boys), women and girls continue to suffer discrimination and violence in every part of the world. This paper explores the plight of the woman in Indian society and the landmark law, Hindu Succession Act, 2005, can it empower a woman to reinstate its right and identity in the society. Efforts have also been made to find out what are the impediments in its way so that as a member of this society we can do our bit for the successful implementation of the law.

Keywords- Indian women, Hindu Succession Act, 2005, Inheritance, Property Right.

Introduction

Consider a situation where you've been married young, without much education or earning potential, and end up being harassed by your husband and his family. To make matters worse, your parents are not too keen to support you and the brothers don't want to give you a share in the ancestral property. What do you do? Financial dependence, be it on the father, brothers or husband, has been at the root of much hardship for women over the years. Ironically, however, the inheritance laws that are supposed to empower women have also had a contrarian impact, according to a 2018 study conducted by King's College London, New York University and the University of Essex. The report states that awarding inheritance rights to women between 1970 and 1990 led to

increased female foeticide and higher female infant mortality rates, a finding supported by the Economic Survey 2017-18.

The plight of a woman

Girls are unwanted and discriminated against all their lives, simply because of their gender-

- **Abuse** – 57% of men in India believe it is justified for husbands to beat their wives, and 53% of women also believe this abuse is justified.
- **Bride Burning** – An estimated 22 women are victims of bride burning every day.
- **Child Marriage** – India is home to 1 in every 3 child brides in the world.
- **Dowry** – Families are expected to pay a dowry of expensive gifts or money when a daughter marries.
- **Female Infanticide (and sex-selective abortions)** – Millions of baby girls “disappear” every year in India due to a cultural preference for boys. Here's a powerful video about how female infanticide affects real families:
- **Having an Older Sister** – A woman who has one daughter already is more likely to kill any other daughters born to her.
- **Illiteracy** – Millions of girls are never sent to school because it is considered a waste of precious resources.
- **Kidnapping** – Since many families choose to kill daughters, there are not enough brides for men—especially in certain areas of India—so girls are stolen from other communities to be brides.
- **Lack of Food** – If a family is poor, a son is the first to be fed ... and the “less valuable” girl is given leftover scraps to eat.
- **Less Medical Attention** – Parents are more likely to seek medical help for sick sons than daughters who are ill.

- **Religious Prostitution** – An estimated 50,000 devadasis (temple prostitutes) live in south India.
- **Sex Trafficking** – India has an estimated 1.2 million child prostitutes.
- **Widows** – India's 40+ million widows are rejected and seen as cursed.
- **Witch Accusations** – One study showed that 2,500 women accused of being witches in India died over a stretch of 15 years.

Some facts and figures

- Globally, 750 million women and girls were married before the age of 18 and at least 200 million women and girls in 30 countries have undergone FGM.
- The rates of girls between 15-19 who are subjected to FGM (female genital mutilation) in the 30 countries where the practice is concentrated have dropped from 1 in 2 girls in 2000 to 1 in 3 girls by 2017.
- In 18 countries, husbands can legally prevent their wives from working; in 39 countries, daughters and sons do not have equal inheritance rights; and 49 countries lack laws protecting women from domestic violence.
- One in five women and girls, including 19 per cent of women and girls aged 15 to 49, have experienced physical and/or sexual violence by an intimate partner within the last 12 months. Yet, 49 countries have no laws that specifically protect women from such violence.
- While women have made important inroads into political office across the world, their representation in national parliaments at 23.7 per cent is still far from parity.
- In 46 countries, women now hold more than 30 per cent of seats in national parliament in at least one chamber.
- Only 52 per cent of women married or in a union freely make their own decisions about sexual relations, contraceptive use and health care.
- Globally, women are just 13 per cent of agricultural land holders.
- Women in Northern Africa hold less than one in five paid jobs in the non-agricultural sector. The proportion of women in paid employment outside the agriculture sector has increased from 35 per cent in 1990 to 41 per cent in 2015.
- More than 100 countries have taken action to track budget allocations for gender equality.
- In Southern Asia, a girl's risk of marrying in childhood has dropped by over 40% since 2000.

An over view of the Daughters' rights in Hindu Succession Act, 2005

Earlier, once a daughter was married, she ceased to be part of her father's HUF. Many saw this as curtailing women's property rights. But on September 9, 2005, the Hindu Succession Act, 1956, which governs the devolution of property among Hindus, was amended. According to Hindu Succession Amendment Act, 2005, every daughter, whether married or unmarried, is considered a member of her father's HUF and can even be appointed as 'karta' (who manages) of his HUF property. The amendment now grants daughters the same rights, duties, liabilities and disabilities that were earlier limited to sons. Earlier, according to the ruling, a daughter can avail of the benefits granted by the amendment only if her father passed away after September 9, 2005. and the daughter is eligible to be a co-sharer only if the father and the daughter were alive on September 9, 2005. However, on February 2, 2018, Supreme Court has made it a general rule that a daughter, living or dead, on the date of amendment will be entitled to share in father's property, thus making her children too to claim this right.

Problem in its implementation

It is never enough to just introduce acts and amend sections to fight against a social evil. This requires strict and ruthless enforcement of such laws.

1. Dowry- We have seen the failure of Dowry law. Only educated and empowered woman can say no to dowry and fight for her right. Legally speaking, dowry is illegal in India. But unfortunately, it is still a common practice in most places in India. Dowry can put great financial burden on low income families. This exploitative system that has turned the custom of giving gifts and well wishes into a compulsory demand for money, respect and subjugation, is the one of the major contributing factors hindering the growth of the Indian society where being a woman is still viewed synonymous to being a burden. And the father by giving dowry thinks that the share of the daughter is now over and thus after marriage she has no right on the property.
2. Female literacy and Education- Education is not just required to find your vocation in life, it is essential to gain eyes and ears to a world beyond the one you can immediately see. Knowledge of their rights will enable them to speak up against ongoing marginalization.
3. In the name of culture and tradition- If you will fight for your right you will be labeled as a bad woman. Because the woman in Indian society is always seen as an epitome of sacrifice. India as a country requires major overhaul of its existing mindsets in order to push back against the iniquitous customs. They need to realise the fact that in today's society women are perfectly capable of doing anything that men can. Women themselves need to come

out of the belief that they are inferior to men and they need to depend on men to provide for them.

4. Social Awareness- there is low awareness and literacy among women about their own rights and, understandably, they have shown little inclination to contest in courts. Creating a widespread awareness of this law is first step. Campaigns should be designed to reach the deepest strata of the society and aim to spread knowledge about this legal provision.
5. Patriarchal set up of the society and the family - Strong patriarchal traditions have translated into fear of violence and threat of violation by their male relatives, preventing women from fighting for their inheritance rights. In fact, in several northern and western states, women give up their claim over ancestral property due to the custom of 'haq tyag' or voluntary renunciation of rights. This is justified on the grounds that as the father pays dowry and finances the daughter's wedding, only sons should get the family property.

Conclusion

Despite strong Constitutional guarantees and courts taking an expansive definition of the fundamental right to life under Article 21 of the Constitution, property rights of Indian women are far from gender-just even today. Even if we have gender-just inheritance laws, their effective and timely implementation may be difficult, given the society we live in. It would help to simultaneously focus on economic empowerment of women. Making investment in girls' ability to earn would not only make them self-reliant and independent, but also help them build their own assets in addition to getting their due inheritance.

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